Chok Foo Choo @ Chok Kee Lian v The China Press Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N–02–85 OF 1996
GOPAL SRI RAM, ABU MANSOR AND DENIS ONG JJCA
7 NOVEMBER 1998

***Tort** — Defamation — Press release — Article published in respondent's newspaper — Appellant alleged words in article were defamatory — Trial judge held words were fair — Whether article was in fact defamatory — Whether defence of fair comment applicable*

The appellant was a businessman and a member of the Malaysian Chinese Association or MCA. The respondent was the publisher of a well-known newspaper in the Chinese language. In one issue of the respondent's newspaper, there appeared an article which the appellant argued had defamed him. He alleged that the natural and ordinary meaning of the words in the offending article meant that he was a cheat and that he was guilty of issuing false statements to the press with the intention of gaining popularity. In other words, the article conveyed the meaning that the appellant was untrustworthy. The first defendant in the High Court denied having used the alleged words which appeared in the article. The High Court judge found the article in question not to be defamatory and that it was 'not lopsided'. He, therefore, dismissed the appellant's claim.

Held, allowing the appeal:

Whether the words complained of are defamatory is a question of fact dependent upon the circumstances of the particular case. The article clearly suggested that the appellant was a person who, under the guise of doing service, was in fact making false statements in order to deceive people. The implication was that the appellant was a man given to deception and was untrustworthy. To say that a man is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally. The judge in the present case had erred when he held that the words complained of were not defamatory of the appellant.

Further, the judge had found that the offending article was 'not lopsided', which meant that it was fair for purposes of the defence of fair comment. However, 'fair' in the defence of fair comment does not mean 'not lopsided', but actually 'honest'. The facts of the present case clearly fell short of making out the defence of fair comment (see pp 375B–D, 376E–F and 377B).

[Bahasa Malaysia summary

Perayu adalah seorang ahli perniagaan dan seorang ahli Persatuan Orang-Orang Cina Malaysia atau MCA. Penentang adalah penerbit sebuah akhbar yang terkenal di dalam bahasa Cina. Di dalam satu isu

akhbar penentang, terdapat satu rencana yang dikatakan perayu telah memfitnahya. Dia mengatakan bahawa makna biasa dan lazim perkataan-perkataan di dalam rencana yang menyinggungkan itu menunjukkan bahawa dia seorang penipu dan telah bersalah dalam mengeluarkan kenyataan-kenyataan palsu kepada pihak akhbar dengan niat untuk mendapat kepopularan. Dalam ertikata lain, rencana tersebut telah menyampaikan maksud yang perayu tidak boleh dipercayai. Defendan pertama telah menafikan, di dalam Mahkamah Tinggi, bahawa dia telah menggunakan perkataan-perkataan seperti yang dituduh, yang terdapat di dalam rencana tersebut. Hakim Mahkamah Tinggi mendapati rencana tersebut tidak berunsur fitnah dan tidak berat sebelah. Beliau kemudiannya telah menolak tuntutan perayu.

Diputuskan, membenarkan rayuan:

Sama ada perkataan-perkataan yang diadukan adalah berunsur fitnah ialah satu persoalan fakta yang bergantung kepada hal keadaan sesuatu kes itu. Rencana tersebut dengan jelasnya mencadangkan bahawa perayu adalah seorang yang, ketika berpura-pura menjalankan perkhidmatan, sebenarnya membuat kenyataan-kenyataan palsu untuk menipu orang ramai. Implikasinya adalah perayu ialah seseorang yang suka menipu dan tidak boleh dipercayai. Mengatakan bahawa seseorang itu adalah penipu atau pembohong, adalah fitnah yang serius terhadap dirinya. Ianya membawa kesan merendahkan perayu di dalam tanggapan ahli-ahli masyarakat yang berfikiran waras amya. Hakim di dalam kes ini telah melakukan kesilapan apabila dia memutuskan bahawa perkataan-perkataan yang diadukan itu adalah tidak memfitnah perayu.

Selanjutnya, hakim telah mendapati rencana yang menyinggung itu tidak berat sebelah, bermakna, ianya adalah wajar untuk tujuan pembelaan komen berpatutan. Walau bagaimana pun, 'wajar' di dalam pembelaan komen berpatutan tidak bermakna 'tidak berat sebelah', tetapi sebenarnya 'jujur'. Fakta-fakta di dalam kes ini tidak menunjukkan bahawa pembelaan komen berpatutan boleh digunakan (lihat ms 375B–D, 376E–F dan 377B).]

Notes

For cases on press release, see 12 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 242–243.

Cases referred to

JB Jeyaretnam v Goh Chok Tong [1985] 1 MLJ 334 (refd)
Jones v Skelton [1963] 3 All ER 952 (refd)
Langlands v Leng (1916) SC (HL) 102 (refd)
London Artists Ltd v Littler [1969] 2 QB 375 (refd)

A *Sutherland & Ors v Stopes* [1925] AC 47 (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393 (refd)

Legislation referred to

B Printing Presses and Publications Act 1984 s 8A

Appeal from: Civil Suit No 23(25)–198 of 1988 (High Court, Seremban)

Manian Raju (*R Shan & Associates*) for the appellant.
C *M Punitha* (*YS Woo & Proctor*) for the respondent.

Cur Adv Vult

Gopal Sri Ram JCA: This appeal arises from the judgment of the High Court at Seremban dismissing with costs the appellant's claim for defamation against the respondent. In the court below, there were two other D defendants, namely Khoo Chee Hian ('the first defendant') and Nanyang Siang Pau Malaysia Bhd ('the third defendant'), but the claim against them was withdrawn by the appellant. They are therefore not before this court, although for some reason, not made entirely clear by counsel for the appellant, they appear as respondents in the appeal.

E The appellant is a businessman and a member of the Malaysian Chinese Association or MCA, which is a political party and several other voluntary service organizations. The respondent is the publisher of a well-known newspaper in the Chinese language called 'China Press'. In the issue of the respondent's newspaper of 25 March 1988, there appeared an article, the agreed translation of the body of which reads as follows:

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> The MCA Lukut branch today criticized Cheok Kee Lian for releasing an irresponsible statement through the Si-Rusa State Representative Mr Krishnasamy, claiming merit for road resurfacing repair at Taman Lukut as his own.
>
> The said branch described that Mr Cheok Kee Lian (the appellant) had G created confusion on the hearing and sight of the residents, therefore clarification on this matter was necessary.
>
> In one of the statements, the said branch pointed out that all the local residents knew that the project of road resurfacing repair at Taman Lukut was approved on application of the said branch through Dr Yew Chai Thiam and the branch chairman Mr Khoo Chee Hian and committee member Mr Hoo H Thong Chuan, whom together with others had actually measured the scene before the application and names were forwarded to the state committee.
>
> The statement said: The above facts clearly show that the MCA branch is really serving and solving problems of local residents of the area. Unlike certain people who are self-considered as devoted social workers, repeatedly releasing false statement in the press in order to cheat the residents.
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> I The statement released by the said branch chairman Mr Khoo Chee Hian [the first defendant] also advised the Si-Rusa State Representative Mr Krishnasamy not to be used by the intended person unaware of the circumstances.

> This State Representative should strengthen the services at Si-Rusa constituency instead of creating waves beyond the boundary at Jimah constituency.

The appellant took umbrage over the article. He issued writ. In his statement of claim, he alleged that the natural and ordinary meaning of the words in the offending article meant and were understood to mean, inter alia, that the appellant was a cheat and that he was guilty of issuing false statements to the press with the intention of gaining popularity. Or, as his counsel put it during the argument before us, the article conveyed the meaning that the appellant was untrustworthy. The appellant contended that it was a serious matter to accuse anyone, especially a politician, of untrustworthiness.

At the trial, the first defendant gave evidence. He denied having used the words 'cheat' or 'false statement' which appeared in the article published by the respondent. Despite the compelling nature of the evidence led before him, the learned judge found the article in question not to be defamatory. He held that it was not lopsided (by which we understand him to say that it was fair in the ordinary sense) and that it was upon a matter of public interest relating to the welfare of a particular locality. He also found that the respondent did not intend to ridicule the appellant in public. He therefore dismissed the appellant's claim. With respect, I am unable to agree with the conclusions of the learned judge.

It cannot, I think, be doubted that the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v Skelton* [1963] 3 All ER 952 at p 958:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory. (See *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334.) Richard Malanjum J, in an admirable judgment in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, collected and reviewed the relevant authorities upon this

A branch of the subject and I would, with respect, expressly approve the approach adopted by him.

The article in the present instance when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The B implication is that the appellant is a man given to deception and is untrustworthy. I think that there can be no doubt that to say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally. It follows that the learned judge in the present case clearly fell into error when he held that the words complained of were not C defamatory of the appellant.

Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case. In D England, libel actions are tried by judge and jury and the question is left for the jury to determine. However, in this country, libel actions are tried by a judge alone, he is the sole arbiter of questions of law as well as questions of fact. He must, therefore, make the determination. In the present instance, it is quite apparent that it is as a matter of pure fact that the article defames the appellant. It literally calls him a cheat and a liar. There can, in my E opinion, be no dispute that the appellant was in fact libelled. I am, therefore, unable to agree with the opposite conclusion arrived at by the learned judge who tried the action.

The fact that the respondent is a newspaper does not in my judgment place it in any special position in the law of libel. As Lord Shaw said in *Langlands v Leng* (1916) SC (HL) 102 at p 110: 'A newspaper has the right, F and no greater or higher right, to make comment upon a public officer or person occupying a situation than an ordinary citizen would have.' Indeed, by reason of their capability to formulate and influence public opinion, those having control over the dissemination of news or views, whether by means of the print or electronic media, should act responsibly. Where G publication is said to be factual, they must ensure that the facts they make available to their readers, listeners or viewers are true. And where they comment upon matters of public interest, they must ensure that the language they use is not inflammatory or tainted with bias. They must bear in mind the serious consequences that might ensue as a result of irresponsible publication or sensationalizing of news or views in a H multiracial country such as ours where there are many sensitive issues that are held in delicate balance. It is in recognition of these matters that Parliament has made the publication of false news an offence. (See s 8A of the Printing Presses and Publications Act 1984.) It is well established jurisprudence that courts should keep in tandem with the national ethos as reflected in the written laws passed by an elected legislature. In the present I context, this is achieved by enforcing the law of defamation in such a way as to ensure that there is truth in journalism while encouraging healthy and constructive criticism. For it must not be forgotten that the fundamental

right to freedom of speech and expression guaranteed by art 10 of the Federal Constitution carries with it a duty to exercise that right with a proper sense of responsibility.

To the appellant's claim, the respondent simply had no defence. On the facts made available to the court, fair comment was not available to the respondent. It is an elementary principle of the law of defamation that for fair comment to succeed the facts upon which comment is made must be true, or if untrue, must have been published on a privileged occasion. (See *London Artists Ltd v Littler* [1969] 2 QB 375.) As Viscount Finlay observed in *Sutherland & Ors v Stopes* [1925] AC 47 at p 62:

> The defence of fair comment on matters of public interest is totally different. The defendant who raises this defence does not take upon himself the burden of showing that the comments are true. *If the facts are truly stated with regard to a matter of public interest*, the defendant will succeed in his defence to an action of libel if the jury are satisfied that the comments are fairly and honestly made. (Emphasis added.)

In the present instance, the first defendant's evidence to the effect that he never uttered the words complained of destroys the defence of fair comment since it is not true that the words were in fact spoken. Put simply, the offending article was not accurate because it attributed to the first defendant defamatory words of the appellant which he never uttered.

What I have said thus far is really sufficient for the determination of this appeal. But there is one other matter which I think I must deal with lest it be assumed that I agree with the learned judge upon it. It has to do with the learned judge's finding that the article in question was not lopsided by which I understand him to mean that it was 'fair' for purposes of the defence of fair comment. If that is the meaning the learned judge intended to convey, I must express my disagreement with his view. 'Fair' in the defence of fair comment does not mean 'not lopsided'. It means 'honest'.

To properly appreciate the nature of the defence of fair comment, I can do no better than to reproduce its ingredients as set out by Dr Spencer Bower in the second edition of his work entitled *The Law of Actionable Defamation* where at p 101, the learned author says this:

> In order that defeasible immunity may attach to the publication of any matter purporting to be comment, such comment must conform to each and every of the following conditions:
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> (i) It must be honest, that is to say, it must contain nothing which is not a genuine expression of the opinion actually entertained by the party defaming;
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> (ii) It must be based on facts stated or assumed, and such facts, unless expressly or impliedly admitted by the party defamed, must be proved by the party defaming to be true;
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> (iii) It must be relevant to, and arise out of, the facts so truly stated or assumed as aforesaid, and must not contain or introduce any new or independent defamatory matter;
>
> (iv) It must not contain any matter imputing discreditable motives to the party defamed, or any matter reflecting upon him otherwise than as the

A author of, or the person responsible for, or concerned in, or connected with the particular conduct, work, or thing which constitutes the subject of the comment.

Comment which satisfies all the above conditions is called 'fair comment'.

The facts of the present case when tested against these ingredients clearly B falls short of making out the defence of fair comment. It follows that the learned judge seriously misdirected himself upon the law when arriving at his decision.

For these reasons, I would allow this appeal and enter judgment for the appellant. I would also remit the matter to the learned judge to assess the damages that the respondent ought to pay the appellant. The respondent C must bear the costs of this appeal and all the costs incurred in the court below, including the costs of the proceedings before the learned judge on the issue of damages.

My learned brothers Abu Mansor and Denis Ong Jiew Fook JJCA have seen this judgment in draft and agree with the reasoning and the D conclusions therein.

Appeal allowed.

Reported by David Lai

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